

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.,

f/k/a GENERAL MOTORS CORPORATION, et al.,

Debtors.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

December 16, 2009

2:07 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

1
2 HEARING re Motion by Debtors for Entry of Order Authorizing
3 Rejection of Certain Personal Property Agreements and/or
4 Abandonment of Equipment (Filed by Jenner & Block)

5
6 HEARING re Debtors' Ninth Omnibus Motion Pursuant to 11 U.S.C.
7 Section 365 to Reject Certain Executory Contracts and Unexpired
8 Leases of Nonresidential Real Property (with respect to
9 Fountain Lakes I, LLC only)

10
11 HEARING re Debtors' Tenth Omnibus Motion Pursuant to 11 U.S.C.
12 Section 365 to Reject Certain Executory Contracts (with respect
13 to Class Action Settlement Agreement with Castillo Claimants,
14 and with DRA, Inc. only)

15
16 HEARING re Application of Federal Republic of Germany for an
17 Order Pursuant to Rule 2004 of the Federal Rules of Bankruptcy
18 Procedure Authorizing and Directing (A) the Production of
19 Documents and (B) the Oral Examination of Individuals
20 Designated by the Debtors and Believed to Have Knowledge of the
21 Relevant Matters

1
2 HEARING re Application of Florian Hinrichs for an Order
3 Pursuant to Rule 2004 of the Federal Rules of Bankruptcy
4 Procedure Authorizing and Directing (A) the Production of
5 Documents and (B) the Oral Examination of Individuals
6 Designated by the Debtors and Believed to Have Knowledge of the
7 Relevant Matters
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1 P R O C E E D I N G S

2 THE COURT: Have seats, please. Okay, GM. I know I
3 have the two contested 2004s. We also have a number of
4 unopposed matters.

5 Mr. Smolinsky, what's your pleasure as to how you'd
6 like to proceed?

7 MR. SMOLINSKY: Thank you, Your Honor. Good
8 afternoon. Joseph Smolinsky, Weil, Gotshal & Manges, for the
9 debtors.

10 Your Honor, two days ago we filed an agenda with the
11 Court. If you don't have your copy, I could hand it up.

12 THE COURT: No, I do have it, and of course it has the
13 contested matters first --

14 MR. SMOLINSKY: Correct, and we --

15 THE COURT: -- as they're supposed to be, and then I
16 saw a whole bunch of uncontested matters.

17 MR. SMOLINSKY: We can skip to the uncontested matters
18 first and let everybody else leave. Ms. Evans (sic) from
19 Jenner & Block will be presenting the first uncontested matter.
20 Before I cede the podium, I just wanted to note for Your Honor
21 there was one matter on the calendar outside Napleton, which is
22 number 11 on our agenda, which does not indicate that the
23 matter was adjourned. We've settled that matter but we don't
24 have an order yet, so we're going to adjourn that matter, as
25 indicated.

1 THE COURT: Okay.

2 MR. SMOLINSKY: Thank you.

3 MS. EDMONDSON: Your Honor, Elizabeth Edmondson with
4 Jenner & Block. We have an uncontested motion for rejection of
5 certain leveraged lease agreements, and I have a revised order.
6 I can walk you through the changes to the order, if you'd like.

7 THE COURT: Well, frankly, if it's unopposed, I don't
8 think I need you to do that, Ms. Evans (sic), so why don't you
9 just drop the revised order with my courtroom deputy Ms. Blum
10 across the hall.

11 MS. EDMONDSON: Okay, great. Thank you.

12 MR. SMOLINSKY: Your Honor, number 4 on the agenda is
13 the debtors' ninth omnibus motion to reject executory
14 contracts. This is a motion that has been adjourned with
15 respect to certain of the parties. Today we want to resolve
16 the matter of Fountain Lakes. Fountain Lakes filed an
17 objection based on a dispute over ownership of a rack system.
18 We've resolved that issue; we've abandoned the rack system to
19 them. And we have an order to hand up to Your Honor resolving
20 that objection.

21 THE COURT: Okay, so I have the same request: that
22 you or your designee just drop it off with Ms. Blum across the
23 hall.

24 MR. SMOLINSKY: Absolutely, Your Honor. Number 5 on
25 the agenda is the debtors' tenth omnibus motion to reject

1 contracts. This is also an adjourned motion. There are two
2 things happening on this motion today. With respect to DRA,
3 Inc., we are withdrawing that motion with respect to them, and
4 we will be submitting an order to that effect.

5 THE COURT: Okay.

6 MR. SMOLINSKY: The last one is Castillo. And with
7 respect to the Castillo contract, they filed an objection.
8 They now, after discussion, agree that the contract can be
9 rejected, provided that it's without prejudice to parties'
10 rights with respect to an adversary proceeding that's pending
11 before this Court. We have an order to that effect, and that
12 resolves the Castillo objection.

13 THE COURT: Fair enough.

14 MR. SMOLINSKY: I think that leaves Mr. Hinrichs and
15 the Federal Republic of Germany.

16 THE COURT: Okay, then I'll hear argument on that.
17 I'll hear it from the two movants together, because they seem
18 to me very closely related to raise similar issues.

19 Folks, if this were a motion for relief from the stay
20 I would have very material concerns, because I suspect there
21 may be hundreds, if not thousands, of people with product
22 liability claims out there, and there really would be huge
23 floodgates issues. But I have more difficulty seeing why it's
24 a big deal just to give the claimants some information. And
25 I'll hear people's arguments about that.

1 Go ahead.

2 MR. GEBRAEL: Thank you. Good afternoon, Your Honor.
3 My name's Samir Gebrael, from Klestadt & Winters, on behalf of
4 the Federal Republic of Germany, which I'll refer to as the
5 FRG, and Mr. Hinrichs. We represent these both parties in the
6 2004 application for the production of documents and the
7 examination of certain individuals designated by the debtors.

8 I also have with me Mr. Morrison, Rick Morrison, and
9 he has been admitted pro hac vice. His order just was entered
10 last night. Currently, he's counsel for Mr. Hinrichs in the
11 Alabama state case. And I'll go over the outline of our
12 application, but if there's any specific questions that you
13 would like to ask regarding the underlying claim, he's here to
14 answer that.

15 THE COURT: Well, I mean, I've read the papers; I
16 don't want you to repeat what's in them. I want you folks,
17 both sides, to focus on giving me comfort that you're not
18 trying to make a claim against the estate out of assets of the
19 estate, and if in fact it is the case, that all you're looking
20 for is confirmation that the debtor has or doesn't have
21 insurance and you're of a mind to go solely against the
22 insurance. Both sides can help me as to why you weren't able
23 to just trade that kind of information and get on with life.

24 Mr. Gebrael, if this is the first step toward bringing
25 litigation where you would be looking for relief from the stay

1 before me or trying to bring on a tort litigation in this court
2 or in the district court, I would have material problems with
3 that. But I need help from both sides on whether it indeed is
4 the case that all you're looking to do is find out if the
5 debtor has insurance, and if so, to get that answer.

6 So go ahead.

7 MR. GEBRAEL: Your Honor, that's exactly right.
8 That's all we're trying to do. This is just about due
9 diligence. We filed our application about four or five months
10 ago, and in the last four months we've received in total six
11 pages of documents. Three pages were a declaration of Mr. Chu,
12 who is purportedly an expert on the issue of claim coverage.
13 The other three documents were a declaration page that was
14 redacted. Perhaps counsel was trying to figure out some kind
15 of way to resolve this, so I'm not saying that, you know,
16 giving us a redacted declaration page was something that they
17 were doing that we oppose. But with the declaration page that
18 was redacted came a condition that we would then have to
19 withdraw our 2004 application once we saw the unredacted
20 declaration page. We simply could not agree to that condition.

21 And that went on for a few months. And finally
22 perhaps seeing the unreasonable standard they took, last Friday
23 they did agree to withdraw that condition and they did turn
24 over the unredacted declaration page of the self-insurance
25 policy, if you want to call it. However, they did not turn

1 over what we had asked for, which is the entire policy. There
2 might be caveats in there, there might be some kind of terms in
3 there that we need to understand. This is about doing our due
4 diligence and this is about making sure that we do turn every
5 stone and make sure that we do read every document as
6 fiduciaries to Mr. Hinrichs and the Federal Republic of
7 Germany.

8 THE COURT: Did you offer to take it on an attorneys'-
9 eyes-only basis and not to share it with any other tort
10 litigants?

11 MR. GEBRAEL: Of course, Your Honor. We immediately
12 signed a confidentiality agreement using whatever terms they
13 would like. We didn't change any of the terms of their
14 confidentiality agreement to see the declaration page, and we
15 were willing to also sign the same confidentiality agreement to
16 see the entire policy. It's also about the excess policy that
17 they said that we're not allowed to see.

18 It is true that Mr. Hinrichs filed a claim for twenty-
19 five million dollars, but that is an estimate of what the claim
20 is for. The claim can be for more money, for more -- for a
21 bigger amount, and we explained that to them, and they said,
22 well, since it's only for twenty-five million, file the twenty-
23 five million, then you're not allowed to see the excess or
24 umbrella which goes over the thirty-five million mark.

25 Again, we don't see any harm in turning over this

1 policy. In fact, it's a benefit to their estate to turn over
2 these documents.

3 THE COURT: Why is it that?

4 MR. GEBRAEL: Well, if in fact there is a policy, that
5 we can somehow negotiate a modification -- not now, we're not
6 looking to do this now, but down the line -- a modification of
7 the stay to go over just those proceeds from that policy, then
8 it would benefit the estate.

9 There are some, again, some other questions that
10 remain unanswered. We had asked them to provide information
11 regarding the -- and if there's any reserves that had been set.

12 THE COURT: The what?

13 MR. GEBRAEL: Any reserves that had been set related
14 to the underlying claim; any monies set aside.

15 THE COURT: Why would that possibly be relevant?

16 MR. GEBRAEL: Your Honor, if there was any --

17 THE COURT: Because I was wondering, Mr. Gebrael, how
18 it could be that a matter of this seeming simplicity could
19 engender so many lawyers coming into my courtroom, including
20 one being Alabama counsel. And if it were just going over the
21 pieces of paper or refusal to do that, it would cause me to
22 scratch my head. But when you start talking about other
23 things, I'm beginning to wonder whether something's under the
24 covers.

25 I have never, in -- I'm coming up on my fortieth year

1 as a lawyer and a judge -- ever seen a Court order discovery of
2 one litigant's reserve or estimate of its liability to its
3 opponent. And that's unthinkable to me as a bankruptcy judge,
4 as a bankruptcy lawyer or as the civil litigator that I once
5 was before I was either.

6 MR. GEBRAEL: You're right, Your Honor. That's not
7 our main concern here. I do agree with you; we're not looking
8 for the actual amount. You're right. The other thing we're
9 looking for is the self-insurance, the program, how it is it's
10 set and how -- you know, if there was any communications
11 regarding this claim. They were basically saying that all that
12 information regarding the self-insurance program is privileged.
13 And we had asked that if it was in fact privileged, then they
14 give us some more detail about exactly what is privileged.

15 Again, those two are actually secondary issues. Our
16 main issue here really is about the policy and seeing that
17 policy and making sure that we've gone through the policy and
18 making sure there isn't any caveats, there aren't any
19 exceptions for our client.

20 In regards to the declaration, Your Honor, we --
21 actually, going back to even the information about the --
22 sorry, regarding the -- sorry -- about if there's -- the way
23 that -- the procedure for setting up the self-insurance
24 retention, they had replied to us that, you know, again, that
25 there is no procedure or that most of the information is

1 privileged or that most -- that they just simply don't have the
2 information, and they replied to us through e-mails. And,
3 again, in light of the magnitude here that we're dealing with a
4 twenty-five million dollar claim, and in light of -- I don't
5 really want to get into this too much, but we do have some
6 information regarding that there's a history that this debtor
7 might be obstructive sometimes when it comes to discovery in
8 these type of matters, we felt that it was prudent that we get
9 every answer through a sworn declaration and not through an
10 e-mail. It's just simply due diligence, Your Honor. And they
11 refused and they said they've done everything they could and
12 e-mails will have to suffice. We couldn't accept that answer.

13 They're arguing here that, Your Honor, the 2004
14 application somehow seems restricted discovery. It does not.
15 It's simply asking for insurance information related to
16 coverage possibilities involving the assets within or outside
17 of the estate.

18 And time is of the essence here. Mr. Hinrichs is a
19 quadriplegic. I'm not -- we're not saying -- representing that
20 he's, you know, going to pass away soon, but, still, the
21 damages he has suffered, he'd like to get answers soon.

22 THE COURT: Well, then why is time of the essence?
23 Because I assume that even if the debtors gave you information,
24 and even if it turned out that there was insurance information,
25 and even if you then negotiated a stip with the debtors of the

1 type that's so often entered into, under which you have relief
2 from the stay so long as you agree to go solely against
3 insurance, you then got to proceed with discovery in Alabama or
4 wherever the underlying litigation is, get on a trial calendar
5 in Alabama, get an Alabama judgment, and then, unless the
6 insurance company is of a mind to write you out a check, to
7 wait until that matter is resolved on appeal, since in my
8 experience you normally can't write out a check to yourself on
9 a supersedeas bond. Am I mistaken in any of those
10 understandings?

11 MR. GEBRAEL: No, I -- you're right, Your Honor, but
12 we want to get that process started as soon as possible if in
13 fact there is such a policy out there.

14 THE COURT: Go on.

15 MR. GEBRAEL: In terms of the burdens, Your Honor,
16 they've asserted time and again that they don't have possession
17 of these documents. We find that very difficult to believe in
18 light of the fact that -- well, first they assert there are
19 thousands of claims such as these. If in fact it's true that
20 they have thousands of these claims, then why don't they have
21 the policy?

22 Another point, Your Honor, is that the debtors are
23 still named as secondary insured on the policies. So, again,
24 we find it hard to believe the secondary insured that they
25 don't have this policy.

1 And, finally, on Friday they did produce the
2 unredacted version of this declaration page. So, again, it
3 shows that they do have possession of these documents.

4 And finally, just based on the nature of this
5 proceeding, based on the fact that if today a claimant would
6 file a claim against New GM, New GM would have to go to, in a
7 sense, to Old GM to get documents in regards to vehicles
8 manufactured before the filing. So it seems like there might
9 be some kind of a document exchange agreement between them, and
10 it seems unbelievable that they would say that they just simply
11 don't have the requisite control to turn over these documents.

12 That's it, Your Honor.

13 THE COURT: Okay.

14 MR. GEBRAEL: For those reasons, we ask that you allow
15 our application.

16 THE COURT: Fair enough.

17 Who's going to argue for the debtors? Mr. Smolinsky.

18 MR. SMOLINSKY: Thank you, Your Honor. Again, Joe
19 Smolinsky for the debtors.

20 Your Honor, just for the record and by way of update,
21 we did last week deliver to counsel for Mr. Hinrichs a copy of
22 declaration pages for the excess layer of coverage. Despite
23 what's said in the papers about the fact that we conditioned
24 the delivery of those papers on -- which were on the motion,
25 with prejudice, we didn't ask for withdrawal of the prejudice.

1 What we asked is that if we give you the declaration pages
2 which demonstrate that there's a thirty-five million dollar
3 threshold before any indemnity insurance is available, would
4 that resolve the issues, because I think what you're hearing
5 from Mr. Gebrael today is a little bit about what we've been
6 going through over the last several months. They say they just
7 want to know whether there's coverage.

8 THE COURT: Well, I hear you loud and clear on that,
9 Mr. Smolinsky, and I've been scratching my head to figure out
10 why this wasn't consensually resolved and why everybody got to
11 so much brief-writing. And I sense from some of the questions,
12 or at least there's an issue in my mind from some of the
13 questions that went back and forth, that this goes beyond just
14 getting a copy of the policy and some things that might be
15 fairly regarded as overreaching. But I guess the question I
16 want to ask you is why didn't you give him the stuff that would
17 have been obvious to give him and then say over my dead body if
18 you want anything else?

19 MR. SMOLINSKY: Your Honor, let me go there and then
20 come back to why generally we're taking the position that we
21 are, from the debtors' perspective, because I think it is
22 relevant to try to resolve all of these claims that we have.

23 But let me give you some insight into the position of
24 New GM, because, at bottom, that's one of the reasons why --
25 it's not the debtors' reason, but it's one of the reasons why

1 we have not turned over the policy. Under the master sale and
2 purchase agreement, these policies constitute purchased assets;
3 so they acquired the policies. That doesn't necessarily mean
4 that we don't have access to the indemnity as an insured, but
5 it does mean that they are the owners of the policy.

6 And they have told us that these policies are
7 considered confidential and proprietary. And over the past
8 many years, their experience is that they have not been
9 required to turn over these policies, and now they are the
10 successor to the policy.

11 THE COURT: Well, until June 1st of this year they
12 were never in bankruptcy, were they?

13 MR. SMOLINSKY: I understand, Your Honor. We -- in an
14 effort to avoid a situation where parties have to subpoena -- I
15 want to make clear, we do have copies of the policy. When we
16 talked about custody and control, what we were talking about is
17 whether or not we are authorized to turn over a policy that
18 belongs to someone else when they say that it's proprietary and
19 confidential.

20 What Mr. Gebrael is interested in, which I think you
21 alluded to before, is whether or not you would agree to a
22 stipulation lifting the automatic stay and agreeing to go after
23 insurance. And here that's not plausible because this company
24 had a thirty-five million dollar self-insured retention. The
25 proof of claim that was filed is in a fixed liquidated amount

1 of twenty-five million dollars. It doesn't say an amount at
2 least twenty-five million dollars; it doesn't say an amount to
3 be determined by the Court. It's a proof of claim in the
4 amount of twenty-five million dollars. Therefore, this policy
5 is not necessarily relevant to this proof of claim.

6 This is not the situation where we should be -- that
7 we as debtors felt that we should embark in litigation with New
8 GM over this or whether we should participate in subpoenas and
9 the like. I think the goal of the debtors was to work with New
10 GM to try to provide as much information as was necessary at
11 this juncture of the proceedings.

12 We have had a number of requests by parties for
13 information on the insurance, and we have been able to resolve
14 those requests by providing them with information that there's
15 a thirty-five million dollar retention. And when asked whether
16 they want to lift the stay to proceed against the insurance,
17 the answer is a resounding no.

18 Mr. Gebrael always wants to know more. He wants to
19 know, well, how much do you have on reserve for this case, and
20 he wants to know, well, if this is a self-insured case, where's
21 the self-insurance policy, where's the money that's sitting
22 there for the self-insured claims. And we keep --

23 THE COURT: I'm not sure if I understand that
24 question.

25 MR. SMOLINSKY: We don't either, Your Honor. What we

1 explained is -- this is not like workers' comp coverage where
2 if you're self-insured you have to have a process of having
3 sureties or whatever. This is just a self-insured plan, which
4 means that we cover the first thirty-five million dollars of
5 any expenses or judgments or settlements arising out of it, and
6 only after we pay out thirty-five million dollars are we
7 allowed to seek indemnity from the insurer.

8 THE COURT: Yes, I understand very well. I mean, I
9 don't know if you were in the courtroom when I said, if I were
10 king of the world, parties wouldn't be allow to self-insure,
11 and corporations, just like people who drive on the highway,
12 would be required to have insurance. But in the United States
13 we allow corporations to self-insure.

14 MR. SMOLINSKY: And I don't disagree with that, and
15 I've seen through my career a lot of very unfortunate
16 circumstances. Self-insured health plans are the same. And we
17 have thousands of these cases, and they're sad cases. We
18 have -- virtually every major accident that happens in America
19 that involves a GM car we end up with a lawsuit, and we have to
20 deal with all those lawsuits.

21 And going back to the debtors' perspective on this, I
22 want you to understand where we're coming from. November 30th
23 was the bar date for the first filed debtors. We are in the
24 process of processing those claims. There are so far more than
25 68,000 claims, which are for the face amount, not including

1 unliquidated claims, of more than 217 billion dollars.

2 Now, unlike a typical case where you have a lot of
3 fixed liquidated claims, in this case a lot of the day-to-day
4 fixed liquidated claims were assumed by the purchaser. So a
5 substantial majority of these claims that I'm talking about are
6 unliquidated litigation claims. And it's our job as the
7 debtors and as fiduciaries to try to reconcile those claims as
8 quickly as possible and to try to manage that process so we can
9 make meaningful distributions to creditors, to bondholders, as
10 quickly as possible without having to reserve the majority of
11 the funds. And we have a way to do that. We've been working
12 with the committee on putting together a comprehensive ADR
13 procedure that we hope to have in front of Your Honor by the
14 end of this month.

15 And there are a number of these requests, and I think
16 that our focus should be on dealing with the substance of the
17 claims, particularly where we have a twenty-five million dollar
18 claim and a thirty-five million dollar excess policy that may
19 become relevant in a discussion over the merits of the claim
20 and resolving the underlying claim.

21 We're not trying to keep that coverage away. To the
22 extent that it's available to a settlement, then we clearly
23 would consider that and analyze that. And plaintiffs are going
24 to have the risk of whether or not that coverage is available.
25 There are issues as to whether or not the insurance company,

1 under the policy, would cover where we don't pay out the
2 thirty-five million dollars of cash.

3 But what we should be focusing on is the claims and
4 not sitting in depositions and not sitting -- and not
5 responding to repetitive questions about the underlying
6 insurance, because at this point I think the important issue is
7 that there is no insurance below thirty-five million dollars.
8 We've stated that loud and clear, we've provided a declaration
9 of Mr. Chu to that effect, and that's been sufficient with
10 respect to the other inquirers on those issues.

11 Your Honor, I think that -- on the legal issues, I
12 think that it's -- we fully briefed, and I won't go over those
13 issues again. But I wanted Your Honor to know about the two
14 underlying issues: first, our issue that we want this to be
15 fair, we want to get the process of reconciling these claims
16 going as quickly as possible, and that there are parties out
17 there who want to resolve their claims, and we're establishing
18 a procedure for doing that; and secondly, the New GM issue,
19 which is an issue that I think we -- you know, we've had to
20 deal with it, and we've been able to get New GM to provide the
21 basic information which I think is necessary, through
22 declarations, through declaration pages.

23 And just on that, when we sent the first few
24 declaration pages of the policy, it was redacted, but the
25 information that was redacted is clearly indicated as the

1 premiums that are paid for the policy, and I don't think that
2 that's relevant to Mr. Hinrichs' inquiries.

3 THE COURT: Okay.

4 Reply?

5 MR. GEBRAEL: I just wanted to add one final thing,
6 Your Honor. In a sense, what you had said is very true that if
7 it was for any other company, a self-insurance program of
8 thirty-five million dollars would just be unheard of. And as
9 Mr. Morrison -- you know, we had discussed this before the
10 filing. This would just be thirty-five million self-retention;
11 fine, nobody would question that, but because -- we are kind of
12 in this new situation that we're maybe pushing a little bit
13 further to make sure that we've asked all the questions that we
14 need to ask and see all the documents that we need to see.

15 That's it, Your Honor. Thank you.

16 THE COURT: All right.

17 Everybody sit in place.

18 (Pause)

19 THE COURT: All right, folks, the motion will be
20 granted in part and denied in part, and the following are the
21 specifics of my ruling and the bases for the exercise of my
22 discretion.

23 The motion is granted to the extent of requiring GM to
24 produce the entire policy on an attorneys'-eyes-only basis,
25 those attorneys' eyes being an attorney who practices in the

1 United States Bankruptcy Court for the Southern District of New
2 York, under a suitable confidentiality agreement, which
3 agreement or any associated order expressly provides that the
4 information provided to counsel will not be shared with counsel
5 for other litigants, and which may, if the GM estate chooses
6 to, the Old GM estate, redact the premiums that were paid for
7 that policy if they appear in the policy that would be
8 produced.

9 The motion is also granted to the extent of permitting
10 discovery of Mr. Chu or another knowledgeable witness to the
11 extent of a deposition not to exceed an hour and a half and to
12 be limited to explaining his understanding of what the policy
13 provides and saying if it is a subject of inquiry, and if it is
14 of course true, that that's the only policy that's out there.

15 The request is otherwise denied. I am expressly
16 denying the request for discovery of reserves with respect to
17 this or any other litigation. I am expressly denying discovery
18 with respect to the mental impressions of any lawyer or
19 businessperson associated with Old GM or New GM, with respect
20 to this or any other litigation that I'm expressly denying
21 discovery with respect to the crafting of the self-insurance
22 program. In other words, we're not going to inquire into GM's
23 noninsurance, except to confirm that the policy is the only
24 insurance.

25 The underlying rationale upon which I'm authorizing

1 this discovery is that I do believe that it is appropriate for
2 discovery, in a bankruptcy context, in unusual cases, this
3 being one of them, to permit discovery to ascertain whether
4 entering into the traditional stip by which partial relief in
5 the stay is authorized to allow one to go against insurance is
6 a practical option. The purpose is not to inquire as to the
7 underlying claim, most obviously the extent to which GM made a
8 quality car or made design errors in connection with it or
9 anything that might be a subject of inquiry in an underlying
10 tort action, nor is it appropriate to ascertain anything about
11 Old GM Motors Liquidation Company's -- I think its present name
12 is -- ability to satisfy a claim if liability were ever to be
13 found.

14 I think I telegraphed in my questioning why I consider
15 information as to reserves inappropriate; I'm not going to
16 repeat that. I will incorporate the assumptions that were in
17 my question by reference. I never have, nor, barring something
18 extraordinarily unforeseen, never will, require one party to
19 produce to its adversary its views either subjectively or by
20 dollar monetization as to what it might owe to somebody else
21 vis-a-vis a nonliquidated dispute toward litigation. Likewise,
22 the crafting of the self-insurance program would not be
23 relevant. The extent, if any, to which it would be relevant is
24 to simply find out whether there is a policy which folks could
25 agree would be the sole provider of any recovery in the event

1 of any future motion or stip for relief from the stay.

2 I well understand the desire of New GM not to share
3 this information, but New GM's desires in this regard can't be
4 controlling upon me; I have a Chapter 11 case under my watch.
5 And while the existence of insurance would obviously not be
6 relevant in a nonbankruptcy situation, except for purposes that
7 are not before me here, it becomes relevant because of the
8 limited ability of Old GM to satisfy claims of any type on an
9 unsecured basis. And that's why I'm so ruling.

10 For the avoidance of doubt, and at the risk of my
11 repeating myself, there shall be no discovery on the merits of
12 the underlying litigation now pending in Alabama.

13 I wonder under all of this whether our needs and
14 concerns can be satisfied simply by a one-page letter of
15 transmittal handing over whatever number of pages there are in
16 the full policy after it's been redacted. But if there is a
17 desire or need to depose an Old GM witness, Chu or a pinch
18 hitter can be examined for no more than an hour and a half.

19 I'm going to so order the record, but either side can
20 provide for a written order if that's perceived as desirable by
21 either side.

22 Not by way of re-argument, are there any questions?

23 Mr. Smolinsky.

24 MR. SMOLINSKY: Thank you, Your Honor. Just one point
25 of clarification. If the deposition does go forward, are the

1 attendees limited to the bankruptcy lawyers who are going to be
2 reviewing the policy?

3 THE COURT: Yes, but I think if your creditors'
4 committee's bankruptcy lawyers want to attend, you should let
5 them attend also.

6 MR. SMOLINSKY: Absolutely.

7 THE COURT: Yes.

8 Anything else, anybody?

9 Let me just underscore that the reason for the last
10 ruling that Mr. Smolinsky asked for clarification on was not to
11 be mean to tort lawyers or lawyers outside of this
12 jurisdiction. The point is that the purpose of this is
13 bankruptcy-driven; it is not tort litigation-driven. And on an
14 attorneys'-eyes-only document of this sensitivity, I want Mr.
15 Klestadt or one of his colleagues -- Mr. Klestadt I obviously
16 know, because I can rely on his integrity in complying with one
17 of my orders. That's not to be mean or to say anything bad
18 about people I don't know; it's just that I have confidence
19 that Mr. Klestadt will comply with one of my orders.

20 Anything else, anybody?

21 Okay, have a good day, folks. We're adjourned.

22 (Proceedings concluded at 2:51 PM)

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I N D E X

R U L I N G S

DESCRIPTION	PAGE	LINE
Application of Federal Republic of Germany and Florian Hinrichs for an Order Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure Authorizing and Directing (A) the Production of Documents and (B) the Oral Examination of Individuals Designated by the Debtors and Believed to Have Knowledge of the Relevant Matters, Granted in Part and Denied in Part	24	20

C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true
and accurate record of the proceedings.

Clara Rubin

AAERT Certified Electronic Transcriber (CET**D-491)

Veritext

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Date: December 17, 2009